February 27, 2006

Department of the Interior
Minerals Management Service
Attention: Rules Processing Team
381 Elden Street, MS–4024
Herndon, Virginia 20170–4817

Walter D. Cruickshank
Acting Director
Minerals Management Service
381 Elden Street
Herndon, Virginia 20170-4817

Re: Comments of Clean Energy States Alliance
Advanced Notice of Proposed Rulemaking
Alternate Energy-Related Uses on the Outer Continental Shelf, Docket No. RIN 1010–AD30

Dear Director Cruickshank:

I write on behalf of the Clean Energy States Alliance (CESA), a multi-state coalition of state clean energy programs working together to promote clean energy technologies. CESA is a §501 (c)(3) non-profit organization that represents these state energy programs and serves to coordinate their common goals. A primary objective of CESA, and its state members individually and collectively, is to identify and address barriers to the development and growth of viable renewable energy resources in the United States. We direct you to our website, www.cleanenergystates.org, for detailed information on CESA's members and activities.[1]

CESA seeks to participate actively in the successful design and implementation of the new program for development of Alternate Energy-Related Uses on the Outer Continental Shelf (OCS). In an accompanying document, CESA submits detailed comments responding to the Minerals Management Service's (MMS) Advance Notice of Proposed Ruling Making (ANPR). In this cover letter, we summarize our major recommendations.

[1] Fourteen states across the U.S. are CESA members, including Arizona, California, Connecticut, Illinois, Massachusetts, Minnesota, New Jersey, Minnesota, Oregon, Rhode Island, New York, Wisconsin, Pennsylvania, and Ohio.

CESA also offers a process recommendation. While the ANPR is an important beginning to consultation, CESA recommends that the MMS employ a collaborative process with the major stakeholders to develop the new Renewable Energy Program. We believe that a collaborative dialogue, conducted through a series of meetings over the next few months, would allow the Service to better understand state perspectives, solicit effective approaches to facilitate appropriate offshore renewable energy siting, and create a better alignment of state and federal interests and cooperation. Specifically, CESA recommends immediate establishment of a working group, and/or convening of workshops, with representatives from the wind industry, CESA, officials from coastal states with responsibility for marine and energy management, environmental ngos, and other interested parties, to ensure meaningful discussion with stakeholders in developing the new program. CESA is willing to convene this working group, if MMS is interested.

Going forward, CESA offers its assistance, expertise, and resources to MMS at all stages of this critical program development. While CESA members support a range of renewable energy technologies, for the purposes of our comments, we primarily address offshore wind energy development.

Summary of Program Recommendations:

1. **MMS, as Lead Agency, Should Establish an Efficient Regulatory & Leasing Framework that Facilitates the Growth of Offshore Renewable Energy Development in an Environmentally Responsible Manner.**

CESA welcomes the designation by Congress in the Energy Policy Act of 2005 (EPAct) of MMS as the federal agency responsible for managing the leasing of offshore alternate energy facilities on the OCS. This new authority marks a unique opportunity to reduce the regulatory confusion relating to federal agency jurisdiction over these uses of the OCS and to establish a unified, coordinated approach to the responsible development of offshore renewable energy resources.

As states that are investing significant public funds to support development of clean energy technologies and markets, CESA strongly supports establishment of a regulatory and leasing regime by MMS that facilitates the growth of offshore renewable energy development in an environmentally responsible manner.

Offshore wind, in particular, has emerged as a promising energy resource. This is because the strongest and most consistent winds are offshore and in proximity to major load centers. Accordingly, the potential capacity factor that can be achieved offshore is considerably higher than onshore. Furthermore, offshore locations offer the opportunity for siting much larger turbines that may not be acceptable for onshore projects due to potential visual concerns.

While additional studies certainly are needed to assess offshore wind's full life cycle costs, it is important to note that global experience to date indicates that the negative environmental impacts of offshore wind are minimal. Indeed, as indicated by the International Energy Agency's recent study on *Offshore Wind Experiences*, "the experience to date of environmental and social acceptability has been very positive compared to expectations." IEA, *Offshore Wind Experiences*, 2005, p. 4.

In developing its regulatory program, CESA believes that, foremost, MMS should establish a stable policy framework during the early stages of these alternate energy technologies in order to facilitate the investments necessary to develop a viable industry. A predictable, efficient, and transparent policy framework is critical if the industry is to deliver cost reductions and technology improvements to bring offshore wind energy closer to competitive markets. At least initially, offshore alternate technologies will require targeted policy support measures that ensure recognition of the public benefits of these energy resources. This federal support is absolutely necessary to realize longer-term cost reductions which will come as a result of experience, economies of scale, and increased energy production.

Early and continuous stakeholder involvement and consultation to the MMS program also will be a crucial element for success. Fortunately, MMS already has established a venue and mechanism where industry, state and local governments, and other interested parties can meet to discuss and resolve potentially contentious issues – the Outer Continental Shelf Policy Committee. MMS should include these major stakeholders on the Committee and place offshore wind on the Committee's agenda.

2. MMS Should Use a Strategic, Integrated Stakeholder Approach to Leasing.

In designing its regulatory program, CESA recommends that MMS employ a new **strategic, integrated stakeholder approach** to offshore wind site selection and leasing, in which MMS first would conduct a programmatic environmental review to inform the general scale and location of wind development that would be acceptable in several strategically-selected regions, followed by project-specific leasing and permitting. The approach would be phased in nature, with MMS focusing initially on several strategic regions identified in consultation with industry, state and local officials, and other stakeholders. Additional regional programmatic evaluations would occur in the future for further leasing rounds in other offshore areas, informed by the initial experience in the first strategic areas. CESA believes that this phased approach is better-suited to a new industry where the potential impacts are still unknown or uncertain. The approach also would reduce regulatory conflicts and development delays.

At the same time, MMS should make it possible for developers to obtain certain exploration rights outside the strategic areas and the PEIS process, based on an environmental screening study prepared by a developer. These projects should be reviewed in a similar fashion to the

review of exploration plans by the oil and gas industry, with requirements for environmental assessments and consistency with state policies, such as coastal zone management plans.

Under the proposed strategic approach, MMS would:

a) Conduct a programmatic or strategic environmental impact and planning process to guide the pattern and scale of offshore wind development in targeted regions and to promote efficient development;

b) Ensure proper evaluation of impacts for proposed regions through early strategic planning and a front-loaded environmental review and permitting process;

c) Provide for early outreach and consultation with major stakeholders in affected regions to avoid conflict and build public support for siting decisions; and

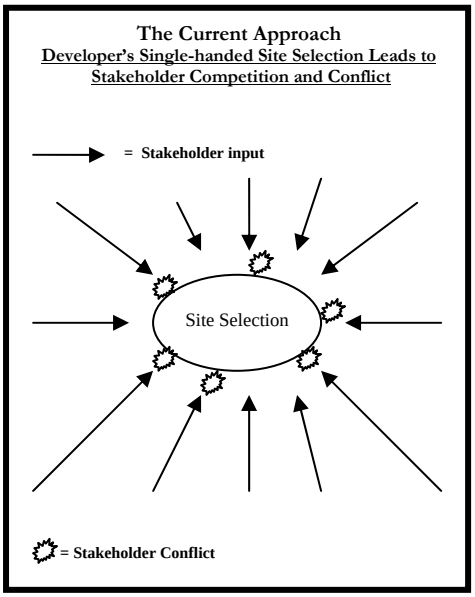
d) Provide for effective monitoring, mitigation, and control of individual and cumulative impacts, with MMS playing a primary role in implementing these elements of adaptive management.

As a first step, MMS should prepare a programmatic environmental impact statement (PEIS) to focus on several strategic regions by identifying baseline data, applying various development scenarios, and predicting impacts where it is possible to do so. To develop the PEIS, MMS should undertake an environmental screening study of the selected strategic areas to provide an assessment of the likely use constraints and the sensitivity of seabed species and habitats in proposed development areas. Wide-area baseline monitoring by MMS, including identification of protected and special concern areas, would provide direction to the industry on desirable areas for development. By strategically reviewing preferred locations for future wind development, the PEIS approach will significantly reduce the residual project risk that project developers face, help to ensure state and community input on identifying more or less desirable locations, and ensure that impacts remain acceptable.

Through the programmatic EIS, MMS also should establish mitigation measures, best management practices (BMPs), and other standard guidelines for wind energy development on the OCS. Stakeholder outreach in developing these measures and guidelines is critical, with particular emphasis on input from state government agencies responsible for coast zone management consistency reviews.

The PEIS, completed pursuant to NEPA, also should serve as the basis for conducting environmental reviews of individual projects. By "tiering" off the programmatic EIS, individual

projects will require less lengthy environmental assessments, and as a result, proposed wind projects can be sited and approved more quickly.[2]

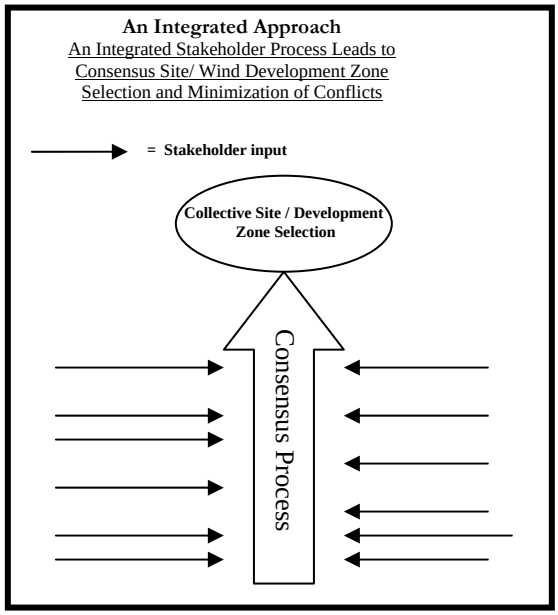


[2] NEPA guidance provided by CEQ recommends the use a programmatic EIS approach in the energy development context. CEQ's Forty Questions provides input on:

When is an **area-wide or overview EIS** appropriate?

A. The preparation of an area-wide or overview EIS may be particularly useful when similar actions, viewed with other reasonably foreseeable or proposed agency actions, share common timing or geography. For example, when a variety of energy projects may be located in a single watershed, or when a series of new energy technologies may be developed through federal funding, the overview or area-wide EIS would serve as a valuable and necessary analysis of the affected environment and the potential cumulative impacts of the reasonably foreseeable actions under that program or within that geographical area.

Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 23 March 1981.



CESA's recommendations are significantly informed by the recent approach taken by the Department of Interior, Bureau of Land Management (BLM) in implementing its new comprehensive Wind Energy Development Program in 11 western states. The elements of the BLM Wind Program were evaluated through preparation of a *Final Programmatic Environmental Impact Statement on Wind Energy Development on BLM-Administered Land in the Western United States* (2005). Based on its PEIS, BLM established policies and best management practices for administration of land-based wind energy development and minimum requirements for mitigation measures. BLM chose its approach because it would facilitate wind energy development and "minimize some of the delays that currently occur for wind energy development projects, ensure consistency in the ROW application and authorization process, and reduce costs." BLM Record of Decision, *Implementation of a Wind Energy Development Program*, December, 2005 (p. 4). Many of BLM's best practices and policies are relevant to offshore context and should be given careful consideration by MMS.

CESA's recommendations also are informed by the planning framework used by the United Kingdom for offshore wind development. In the U.K, the Department of Trade and Industry (DTI), which has energy policy responsibility, initially conducted a strategic environmental assessment (SEA) focusing on three strategic regions, to assist in decision-making on the design and terms of competition for site leases for offshore wind farms. The UK's SEA process provides for a comprehensive assessment of development strategies for offshore wind farms, and examines the likely significant effects of a proposed wind leasing plan or program, including

reasonable alternatives. MMS can gain useful insights from how the SEA process has been employed by the UK in the wind farm development process.

3. **MMS Should Establish an Offshore Alternate Energy Environmental Research Fund.**

MMS should establish funding for the purpose of performing generic environmental studies to assist in the early stages of the development of the offshore wind industry. The role of the Fund would be to identify and commission short to medium-term environmental studies of a generic nature to benefit the offshore wind industry as a whole. For example, priority areas for research may include the potential effects of wind farms on tourism, the potential effects of electromagnetic fields on fish, and bird study methodologies. A logical place to establish this Fund is in the MMS Environmental Studies Program, which has contributed substantially to the understanding of the offshore environment and in predicting impacts from oil and gas development.

4. **MMS Should Employ an Adaptive Management Approach.**

CESA recommends that MMS develop an approach to manage the uncertainties attendant to offshore wind development, by allowing early projects to be approved in spite of some uncertainties, but placing controls on the facilities through setting of management objectives, and monitoring and adaptive management conditions. Experience from developing early wind farms will be invaluable. Therefore, through the programmatic EIS, MMS should identify where gaps exist in baseline data and in predicting impacts, and then fill in these gaps through individual project monitoring, further data collection, and generic impact studies.

5. **MMS Should Facilitate Early Pilot Projects.**

MMS should authorize pilot projects in order to advance the understanding of the environmental and technology issues associated with offshore wind development. Completion of a PEIS process should not necessarily be a prerequisite to the approval of such pilot projects. CESA recommends that MMS provide for an expedited permitting and leasing process for pilot projects to encourage the deployment and gathering of information that can serve as the basis for determining the merits of future commercial project proposals and for advancement of technology.

6. **MMS Should Facilitate Early, Coordinated Agency Review & Permitting.**

A primary objective of MMS should be to create a front-loaded, transparent and inclusive stakeholder process in order to facilitate consensus on site selection and compliance with applicable state and federal environmental laws. A strategic level analysis, conducted through

the PEIS process, should assist affected state and federal agencies to ensure overall wind development plans for a region will satisfy multiple environmental requirements. MMS should encourage other agencies to conduct concurrent and joint rather than consecutive and separate analyses of specific wind project proposals in strategic regions.

MMS also should seek to create a "one-stop-shop" permitting process, in which MMS would act as the primary point of contact for developers in addressing both leasing and permitting issues. MMS should take lead responsibility for inter-agency consultation itself, rather than relying on developers.

To facilitate this integrated consultation and review, MMS should develop memoranda of understanding (MOU) with relevant federal and state regulatory agencies to incorporate their regulatory and permitting requirements into the PEIS process, to the extent feasible, and into subsequent project-specific EISs. The MOUs should detail the process by which regulatory and permitting requirements and agency study needs will be integrated into the MMS leasing program to streamline and coordinate analysis. The MOUs also should set benchmarks for when analyses will be completed.

The MMS also should strive to establish multi-agency evaluation teams that include contact individuals from relevant permitting agencies to coordinate the regulatory requirements of all affected agencies and foster inter-agency cooperation. The MMS should explore with other government agencies the opportunities for front-loading permitting review and approval for areas identified in the PEIS with presumptions for development. Similarly, the MMS should arrange for sequencing of permits with other agencies during project development to avoid delays in agency planning and review.

Potential front-loadable permits and approval include:

- Coastal Zone Management Act federal consistency reviews 16 U.S.C. §1456 *et seq*, 15 C.F.R. Part 930
- Rivers And Harbors Act - section 10 permits, 33 U.S.C. §401 *et seq*.
- Navigational Hazard to Air Traffic (FAA) permits, 14 C.F.R. Part 77
- Coast Guard Navigation Hazards permitting, 33 C.F.R. Parts 62, 64, 66 *et seq*.
- The Estuary Protection Act reviews, 16 U.S.C. §1221 *et seq*.
- The National Historic Preservation Act reviews, 16 U.S.C. §469 *et seq*.
- The National Environmental Protection Act reviews, 42 U.S.C. §4341 *et seq*.
- The Fish and Wildlife Coordination Act consultations, 16 U.S.C. §661 *et seq*.
- The Endangered Species Act permitting, 16 U.S.C. §1531 *et seq*.
- The Migratory Bird Protection Act consultations, 16 U.S.C. §668 *et seq*.
- The Clean Water Act - §404 permitting, 33 U.S.C. §1251 *et seq*.

- The National Marine Sanctuaries Act reviews, 4616 U.S.C. §1431 *et seq.*
- The Marine Mammal Protection Act reviews, 16 U.S.C. §1361 *et seq.*
- Grid interconnection; upland substation permitting; approvals from state public utility commissions and regional electricity reliability organizations and/or grid operators
- State environmental reviews

MMS also should explore the feasibility and potential use of "general permits" for some standard permitting requirements for offshore wind projects through consultation with state and federal agencies responsible for permitting (e.g., FAA lighting approvals, ACOE Clean Water Act §404 permitting, etc.).

7. MMS Should Establish a Modest Royalty Requirement.

CESA recommends that MMS establish a modest royalty payment structure because offshore wind technology is in the early stages of development. The total royalties collected should represent no more than 1-2% of a project's gross revenues, which should prove not to be a major obstacle for the industry.

As for state distribution of royalty revenues, CESA recommends two fundamental purposes for revenue sharing with affected states: (1) to fund projects that will mitigate for the environmental and economic impacts to states and local communities from OCS energy development, and (2) to help promote development of renewable energy resources. The federal share of the royalties should be dedicated to addressing issues related to alternate energy siting on the OCS, including such activities as strategic planning and research.

8. Specific Recommendations on the Structure of the Strategic Planning Approach.

With the BLM and UK strategic planning processes as models, CESA recommends that MMS employ a similar programmatic or strategic environmental assessment process to identify the likely significant effects (positive and negative) on the environment in initial strategic regions from an overall wind development plan, and reasonable alternative scenarios. The process should be used to:

- Identify environmentally preferred locations;

- Develop guidelines and criteria for project design, siting construction and operational management practices, which would inform the individual project review process for both industry and agencies;

- Provide baseline information which can be used in subsequent project-level environmental assessment and impact statements;

- Assess cumulative impacts of possible individual projects;

- Identify the decision-making risk arising from lack of data or uncertainty, and make clear recommendations for studies to provide the requisite data to ensure feedback to future PEIS processes and for mitigation to existing impacts;

- Establish requirements for the scope and content of site-specific project plans of development;

- Highlight where data and information is lacking and identify plans of survey and research to collect such data; and

- Consult extensively with stakeholders, using such mechanisms as the OCS Policy Committee for outreach and to resolve local and state concerns.

PEIS Outcomes

Each regional PEIS would inform specific MMS leasing and permitting decisions by addressing the following:

- Identification of areas where there would be a presumption for and against development, areas where special conditions may be applied, and areas that could not be developed because of their sensitivities;

- Recommendations as to the characteristics (lease terms, project locations, etc.) of leasing rounds or requests for proposals;

- Criteria for guiding siting, construction and operational decisions by operators;

- Data to be used by all those responsible for preparing and reviewing individual project EISs;

- Assessment of the significance of environmental and socio-economic impacts arising form different realistic scales of wind farm development in areas with low levels of constraint.

Preparation of PEIS

MMS should follow these major steps in developing a PEIS:

- Use the OCS Policy Committee to develop policy recommendations relative to offshore wind energy development in any region.

- Establish a regional stakeholder or decision support group for each strategic focus region, comprised of relevant, affected state and federal agencies, environmental non-governmental organizations, and wind industry representatives. An effective precedent is the regional technical working group established for the Gulf of Mexico coastal states relative to OCS oil and gas issues. ***Affected CESA state members are willing to assist in hosting, supporting and/or participating in the regional stakeholder process.***

- Develop an environmental baseline description for each strategic focus area.

- Develop development scenarios for each focus area.

- Perform risk/impact prediction and evaluation.

- Formulate siting guidance for future development of each strategic focus area.

- Conduct public consultation with affected state agencies and communities.

Selection of Strategic Areas

The initial strategic areas should be selected on the basis of analysis of wind databases and provisional indications from the wind industry and officials from coastal states of areas of most interest in terms of offshore wind development. Key features governing the identification of the strategic areas should include proximity to grid connections serving important markets; offshore siting criteria conducive to cost effective construction, operation, and maintenance of wind farms; and avoidance of significant environmental impacts.

To assist MMS in identifying strategic areas, CESA recommends that MMS convene regional stakeholder groups, with significant participation by the affected governor(s), state agencies with relevant statutory obligations, and affected local governments, to identify appropriate study regions and begin to identify/screen sites with promising development characteristics. The regional stakeholder groups would consult to MMS on issues including:

- Development of a process for site screening for resource sensitivity;
- Identification of criteria for areas to avoid due to use conflicts and resource values;
- Identification of areas with low conflict/high development potential;
- Development of regional wind development plans, if possible.

Conclusion:

On these and related issues, CESA remains committed to active dialogue and collaboration with the Minerals Management Service to ensure the responsible development of future offshore alternate-energy resources.

Sincerely,

Mark Sinclair
Vice President, Clean Energy Group
Deputy Director, Clean Energy States Alliance